

H.356

An act relating to approval of amendments to the charter of the Town of Berlin

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. CHARTER AMENDMENT APPROVAL

The General Assembly approves the amendments to the charter of the Town of Berlin as set forth in this act. Proposals of amendments were approved by the voters on August 9, 2016.

Sec. 2. 24 App. V.S.A. chapter 105 is amended to read:

CHAPTER 105. TOWN OF BERLIN

\* \* \*

§ 21. SCOPE

In pertinent part, this charter provides the following subchapters:

~~3.~~(3) General provisions;

~~4.~~(4) A list of Town officers;

~~5.~~ The appointment of a Town Administrator;

~~6.~~(5) Conflict of interest;

~~7.~~(6) Vacancies in elected and appointed offices;

~~8.~~(7) Special procedures;

~~9.~~(8) Removal of elected or appointed Town officers;

~~10.~~(9) The adoption of an Administrative Code;

~~11.~~(10) The separability of any charter section or its parts;

~~12.(11) Procedure for the amendment of this charter; and,~~

~~13. Effective date of this charter.~~

\* \* \*

#### Subchapter 4. Town Officers

##### § 41. GENERALLY

The officers of the Town of Berlin shall be those provided by law for towns, except as otherwise provided by this charter. Such officers shall have all the powers and duties necessary to carry out the provisions of this charter as well as those provided by law and the Administrative Code.

##### § 42. ELECTED OFFICERS

The following officers of the Town and such other Town officers as are provided by law and previous vote of the electorate as to number, length of term, and manner of election at an annual meeting shall be elected by Australian ballot, unless otherwise stated, and shall include the following:

(1) ~~A~~ a Moderator to be elected ~~by paper ballot~~ from the floor, for a term of one year;

(2) ~~A~~ a Town Clerk, for a term of three years;

(3) Selectboard members, three of whom shall serve staggered three year terms and two of whom shall serve one year terms;

(4) ~~Such~~ such other Town officers as the Town shall order as provided by law.

\* \* \*

§ 44. APPOINTED OFFICERS

(a) The Selectboard may appoint, recommend, or approve the appointment of ~~any~~ the following Town officers, for a term of one year from the date of such appointment, unless otherwise specified below, following such notice and warning as required by this charter and the Administrative Code, to include the following:

~~(1) Town Service Officer;~~

~~(2)~~(1) Tree Warden<sub>;</sub>

~~(3)~~(2) Emergency Management Director<sub>;</sub>

~~(4)~~(3) Fire Warden, for a term of five years<sub>;</sub>

~~(5)~~(4) Health Officer<sub>;</sub>

~~(6)~~(5) Members of the Town Planning Commission, for terms of four years<sub>;</sub>

~~(7)~~(6) Members and alternates of the Development Review Board, for terms of four years<sub>;</sub>

~~(8)~~(7) Cemetery commissioners, for terms of three years<sub>;</sub>

~~(9)~~(8) Members of the ~~Board of Recreation~~ Board, for terms of three years<sub>;</sub>

~~(10) Road Superintendent;~~

~~(11)~~(9) Members of the ~~Sewer~~ Public Works Board, for terms of three years;

~~(12)~~(10) Members of the Conservation Commission, for terms of three years;

~~(13)~~ Police Chief;

~~(14)~~(11) Editor of the Town report; ~~and,~~

~~(15)~~(12) Such other Town officers or municipal appointments that may be necessary as provided by law or otherwise authorized by this charter for the orderly and expeditious operations of Town government.

(b) ~~The Road Superintendent and the Police Chief shall serve at the pleasure of the Selectboard.~~ The Selectboard shall appoint, recommend, or approve, as applicable, the appointment of the following officers who will serve at the pleasure of the Selectboard, following the notice and warning as required by this charter and the Administrative Code:

(1) Town Administrator.

(2) Assistant Town Administrator.

(3) Treasurer.

(4) Collector of Delinquent Taxes.

(5) Road Superintendent.

(6) Police Chief.

(7) Zoning Administrator.

(8) Assistant Zoning Administrator.

(9) Assessor or Assessing Services.

(10) Administrative Assistant to the Public Works Board.

(c) The duties and responsibilities of the Grand Juror shall be assigned to the Police Chief.

(d) All appointed Town officers shall be governed by the Town personnel policy.

§ 44A 45. ALTERNATE TOWN OFFICERS

The Selectboard is authorized to appoint people to serve as alternate Town officers in anticipation of disqualifications or unavailability, as needed.

§ 45 46. RELATIONSHIP BETWEEN AND AMONG TOWN OFFICERS

All Town officers whether elected or appointed shall exercise their duties and responsibilities independently unless otherwise provided by law.

~~§ 46. ZONING ADMINISTRATOR~~

~~The Zoning Administrator shall be appointed by and serve at the pleasure of the Selectboard. The Zoning Administrator shall not be a member of the Development Review Board.~~

~~§ 47. TOWN ATTORNEY~~

~~The Selectboard shall have the authority to appoint a Town Attorney and to prosecute and defend all suits in which the Town is interested. The Town Attorney shall serve at the pleasure of the Selectboard.~~

~~§ 48. TERMS OF OFFICE~~

~~Each officer so appointed shall serve from the date he or she is appointed and qualified until the end of the term. Each officer shall hold over until his or her successor is appointed and qualified. Each officer may succeed himself or herself, if the Selectboard so approves, after fulfilling the notice provisions of subchapter 7 of this charter.~~

~~§ 49. TREASURER; COLLECTOR OF DELINQUENT TAXES~~

~~(a) The Selectboard shall appoint a Treasurer, in the manner set forth in subsection (b) of this section, who shall also serve as the Collector of Delinquent Taxes. The appointee shall be competent in the keeping of records, investments, and accounting, and shall serve at the pleasure of the Selectboard.~~

~~(b) Prior to appointing a Treasurer, the Selectboard shall appoint a Committee, composed of three members of the Selectboard and four residents of the Town of Berlin, to review and recommend to the Selectboard qualified candidates for the position of Treasurer. The Committee shall have the authority to solicit candidates, to advertise notice of a vacancy in the Treasurer's position, and to make an investigation of a candidate's credentials and background as the Committee deems appropriate. Upon completion of the investigation and interviewing of candidates, the Committee shall submit to the Selectboard the names of those candidates deemed qualified for the position of Treasurer. The Selectboard shall appoint a Treasurer from among those~~

~~deemed qualified by the Committee. In the event that the Committee does not submit at least three qualified candidates to the Selectboard, the Selectboard shall either appoint a Treasurer from among the qualified candidates or notify the Committee, in writing, that none of the candidates shall be appointed. The Committee shall then reconvene and submit the names of additional qualified candidates to the Selectboard.~~

~~(e) The Selectboard shall appoint a Treasurer or, if applicable, notify the Committee that none of the candidates shall be appointed, no later than 30 days following submission of the names of candidates deemed qualified by the Committee.~~

~~(d) Members of the Committee described in subsection (b) of this section shall serve until a Treasurer is appointed by the Selectboard. Meetings of the Committee shall be warned and conducted as public meetings in accordance with the requirements of Vermont statutes and this charter, and the Committee shall be entitled to meet in executive session as authorized by Vermont statutes.~~

~~(e) Until such time as a Treasurer is appointed pursuant to this section, the Selectboard shall appoint an Interim Treasurer and Collector of Delinquent Taxes.~~

~~§ 50. ASSESSOR~~

~~(a) The Selectboard may appoint an Assessor or arrange for assessing services. Appointees shall be competent in assessment procedures and shall serve at the pleasure of the Selectboard. Appointees shall have the same powers, duties, responsibilities, and liabilities as established by law for listers, except as otherwise provided in this charter.~~

~~(b) Prior to appointing an Assessor, the Selectboard shall appoint a Committee, composed of three members of the Selectboard and four residents of the Town of Berlin, to review and recommend to the Selectboard qualified candidates for the position of Assessor. The Committee shall have the authority to solicit candidates, to advertise notice of the vacancy in the Assessor's position, and to make such investigation of a candidate's credentials and background as the Committee deems appropriate. Upon completion of the investigation and interviewing of candidates, the Committee shall submit to the Selectboard the names of those candidates deemed qualified for the position of Assessor. The Selectboard shall appoint an Assessor from among those deemed qualified by the Committee. In the event that the Committee does not submit at least three qualified candidates to the Selectboard, the Selectboard shall either appoint an Assessor from among the qualified candidates or notify the Committee, in writing, that none of the candidates shall be appointed. The~~

~~Committee shall then reconvene and submit the names of additional qualified candidates to the Selectboard.~~

~~(c) The Selectboard shall appoint an Assessor or, if applicable, notify the Committee that none of the candidates shall be appointed, no later than 30 days following submission of the names of candidates deemed qualified by the Committee.~~

~~(d) Members of the Committee described in subsection (b) of this section shall serve until an Assessor is appointed by the Selectboard. Meetings of the Committee shall be warned and conducted as public meetings in accordance with the requirements of Vermont statutes and this charter, and the Committee shall be entitled to meet in executive session as authorized by Vermont statutes.~~

#### ~~Subchapter 5. Town Administrator~~

#### ~~§ 51. TOWN ADMINISTRATOR~~

~~(a) There may be a Town Administrator appointed by a majority of the Selectboard who shall serve as the Chief Administrative Officer of the Town. The position of Town Administrator may be a full or part-time position as determined by the Selectboard. The Town Administrator shall serve as described in his/her employment contract at the discretion of a majority of the Selectboard.~~

~~(b) The duties of the Town Administrator shall be determined by the Selectboard and may include the following:~~

~~(1) To carry out the decisions of the Selectboard;~~

~~(2) To cause duties required of the Town not committed to the care of any particular officer to be duly performed and executed;~~

~~(3) To perform all duties now conferred by law upon the Selectboard, except that the Town Administrator shall not make appointments, call special or annual meetings, act in any quasi-judicial capacity, make assessments, set fees, or grant waivers or exemptions;~~

~~(4) To sign orders on the general fund of the Town for regular and necessary expenditures as established by the Selectboard;~~

~~(5) To be General Purchasing Agent of the Town, according to the requisition of the various departments and offices; and to present budgets for the various departments and officers of the Town;~~

~~(6) To have charge and supervision of all Town buildings and lands, equipment, tools, and other property, to keep the same in good repair, and to propose replacements or additions as needed to the Selectboard for its approval;~~

~~(7) To supervise and expend all special appropriations of the Town not committed to any other officer, as if the same were a separate department of the Town;~~

~~(8) To have oversight of the highway, police, and sewer departments, and all other administrative functions, except those exercised by other elected Town officers;~~

~~(9) To act as liaison between the Selectboard and other Town officers, boards, commissions, and committees; and~~

~~(10) To perform such other duties as required or requested by the Selectboard or the Sewer Board.~~

~~§ 52. ROLE OF SELECTBOARD~~

~~The Selectboard shall have the authority, by majority vote, to overrule any action or decision of the Town Administrator, after a full and open opportunity to discuss the subject. The Selectboard shall vote and approve all extraordinary expenditures.~~

~~§ 53. RELATIONSHIP WITH ELECTED OFFICIALS~~

~~The Town Administrator shall not interfere with the authority or independence of any elected Town officer.~~

Subchapter ~~6~~ 5. Conflict of Interest

§ ~~64~~ 51. GENERAL PROHIBITION

No elected or appointed Town officer or employee of the Town shall be beneficially interested in any matter requiring the discharge of ~~his/her~~ his or her public office. The purpose of this subchapter is to prohibit the use of

public office for financial or other advantage, whether direct or indirect, by any means or methods whatsoever.

§ ~~62~~ 52. SPECIFIC CONFLICTS

A Town officer (member) shall be disqualified from any proceeding in which ~~his/her~~ his or her impartiality might reasonably be questioned, ~~including instances where:~~ as defined in the Administrative Code.

~~(a) The Town officer or a near relative or business associate has a property or financial interest which might be substantially affected, favorably or adversely, by the decision of the board, commission, or committee, of which the Town officer is a member;~~

~~(b) The Town officer has a personal bias or prejudice toward any party; or~~

~~(c) The Town officer has previously expressed an opinion as to the proper disposition of a specific case or controversy involving the exercise of his or her discretion while acting in a quasi-judicial capacity, such as serving on the Development Review Board on permits and appeals or as a member of the Selectboard acting to lay out, alter, reclassify, or discontinue Town highways.~~

§ ~~63~~. SPECIFIC PROHIBITION

~~A Town officer who is disqualified by virtue of a conflict of interest shall not vote upon, participate in the discussion of, or otherwise sit as a member of~~

~~any board, commission, or committee upon the matter from which he/she is disqualified. He/she may, however, enter an appearance as a party and be heard in all respects as a member of the public might be heard in the same proceeding.~~

~~§ 64. ANNOUNCING A CONFLICT~~

~~If a Town officer recognizes that he or she might have a conflict of interest, or if another person raises an objection to the participation of any Town officer, he or she shall state the nature of the conflict as soon as may be possible and the Town officer shall thereupon disqualify himself or herself from further participation if there is a conflict of interest.~~

~~§ 65. DETERMINATION OF CONFLICT BY OTHER THAN THE TOWN OFFICER~~

~~If a question of a member's disqualification under section 62 of this chapter is brought to the attention of any board, commission, or committee by any party or person or by another board, commission, or committee member, and the member does not disqualify him or herself, the board, commission, or committee shall consider the factual basis for the question and shall decide the matter by majority vote, the challenged member abstaining before any other business is conducted. A formal vote shall be taken on every question of a conflict. Once the vote is taken, the board, commission, or committee shall return to the business before it, and no further time shall be devoted to the~~

~~issue of that conflict. A full report of the issue and discussion shall be made in the minutes of the meeting.~~

~~§ 66. APPOINTMENT OF ALTERNATE OFFICERS~~

~~The Selectboard may appoint an alternate Town officer to serve in place of a disqualified Town officer during the period of disqualification or unavailability.~~

~~§ 67. APPLICATION~~

~~The power to appoint alternates for reasons of unavailability shall be applied only to appointed Town officers.~~

Subchapter 7 6. Vacancies in Elected and Appointed Offices; Notice of

~~§ 74~~ 61. NOTICE OF VACANCY DURING UNEXPIRED TERM

In order to inform citizens of the Town and to afford them the opportunity to participate or serve in Town government, public notice shall be given of municipal vacancies resulting from resignation, death, disability, or change of residence from the Town of a Town officer on any board, commission, or committee or in other public office whether elected or appointed. Such notice shall be made ~~by:~~ as defined in the Administrative Code.

~~(a) Posting the vacancy in the Town Clerk's office and two other public places in the Town at least 10 days prior to the meeting at which the appointing authority intends to fill the vacancy.~~

~~(b) Such notice shall provide for the right of any interested citizen to submit a written application to the appointing authority regarding such vacancy and to be personally interviewed by the appointing authority, if requested by the applicant, prior to the filling of said vacancy as provided by law.~~

~~§ 72. NOTICING OF PENDING VACANCY AT CONCLUSION OF TERM~~

~~At least 10 days before the end of the term of an appointive Town officer, the Selectboard shall post notice of this fact in the Town Clerk's office and two other public places in the Town, giving a brief description of the duties of the position and inviting interested persons to apply to the Selectboard.~~

~~§ 73. NEWSPAPER PUBLICATION~~

~~The Selectboard may publish notices of vacancies in a newspaper of general circulation in the Town.~~

Subchapter § 7. Special Procedures

§ ~~84~~ 71. PUBLIC MEETINGS; AGENDAS

All public meetings of any board, commission, or committee within the Town shall be held pursuant to a written agenda containing therein the specific agenda items to be acted upon. The posting and publishing of ~~said agenda(s)~~ the agendas shall be in accordance with general law and the Administrative Code. In the event that the general law is silent on such matters, agendas shall at a minimum be posted in the Town Clerk's office. Except in emergencies, the same defined as a direct or immediate threat to the public's health, safety,

or welfare, the board, commission, or committee shall not take action on matters other than those agenda items specifically set forth in the written agenda.

§ ~~82~~ 72. ORDINANCES

(a) Town legislation shall be by ordinance. The Selectboard shall have the power to adopt, amend, repeal, and revise ordinances and provide for their enforcement as provided by law. The procedures regarding the adoption, amendment, repeal, or revision of ordinances shall be as provided by law and the Administrative Code.

(b) Ordinances adopted by the Selectboard shall be subject to rescission by vote at a special or annual Town meeting pursuant to the applicable provisions of general law.

~~(c) A book of ordinances shall be prepared and kept by the Selectboard or its designee. The book of ordinances shall be indexed according to subject matter and shall contain all ordinances adopted, amended, repealed, or revised by the Selectboard or the voters of the Town. A current copy of the book of ordinances shall be on file at the Town Clerk's office.~~

~~(d) The book shall also include a copy of the Administrative Code and a copy of this charter.~~

(e) The Town of Berlin shall have the power to adopt ordinances to regulate the cleanup of hazardous materials and to impose penalties or take other actions to regulate or prevent false fire and police alarms.

(d) The Town may adopt and enforce ordinances for the purpose of regulating, licensing, and fixing reasonable and necessary license fees for the following:

(1) places of public resort, accommodation, assemblage, or amusement, whether indoor or outdoor;

(2) places dispensing food and drink to the public, such as restaurants, bars, or inns;

(3) theaters;

(4) displays of fireworks;

(5) public dances and musical performances;

(6) mobile home parks;

(7) itinerant vendors;

(8) the exclusive occupancy of any specified portion of a public street or right-of-way;

(9) the keeping of dogs or other pets;

(10) other activities which the Town has the power to regulate or license by virtue of general law or this charter.

§ ~~83~~ 73. PENALTY FOR DELINQUENT INSTALLMENTS

(a) If the Town of Berlin adopts the installment system of taxes, the Town may vote to collect a penalty for delinquent installment payments of property taxes. ~~Said~~ The vote shall be by Australian ballot and once enacted shall remain in effect until rescinded by a similar vote. Penalties shall not exceed those allowed by law.

(b) When the collection of a delinquent property tax, sewer or water use charge, interest and penalty, or any combination thereof would create an undue expense for the Town, the Treasurer may, after approval of the Selectboard, forgive any delinquent amounts due when the amount is less than \$5.00.

~~§ 84. BOARD OF SEWER COMMISSIONERS~~

~~The Town of Berlin may vote by Australian ballot to create an independent Board of Sewer Commissioners, with full authority to exercise the present powers of the Selectboard in superintending the sewer system, including the power to adopt rates. Such a Board shall consist of five members to be appointed by the Selectboard for staggered three year terms.~~

Subchapter ~~9~~ 8. Removal of Elected Town Officers  
from Municipal Office

§ ~~91~~ 81. REMOVAL

Any elected Town officer may be removed from office subject to ~~the~~  
~~following~~ conditions and procedures: as provided by general law and the  
Administrative Code.

~~(a) There is filed with the Town Clerk a written petition signed by not  
less than 30 percent of the registered voters of the Town seeking the removal  
of such Town officer.~~

~~(b) There shall be held thereafter and within 45 days after filing of said  
petition with the Town Clerk a special Town meeting for the purpose of voting  
by Australian ballot on such Town officer's removal.~~

~~(c) If two thirds of the votes cast by Australian ballot at said special  
Town meeting result in an affirmative vote to remove such Town officer, such  
Town officer shall cease to hold that office and such office shall be considered  
to be vacant.~~

~~(d) Such vacancy shall be filled as provided by law and this charter.~~

§ ~~92~~. LIMITATIONS

~~Only one petition for removal may be filed against any given Town officer  
during any 12 month period of his/her term of office.~~

Subchapter ~~10~~ 9. Administrative Code

§ ~~101~~ 91. GOVERNANCE

(a) An Administrative Code shall be written and approved by the Selectboard, but the Administrative Code shall only implement and shall not expand upon the authorities granted in this charter or in general State law. Prior to the adoption or any amendment of the Administrative Code, the Selectboard shall hold two public meetings concerning that adoption or amendment.

(b) Decisions of the Town of Berlin shall be made using ~~the following procedure:~~ the Administrative Code, this charter, Town ordinances, and Town policies.

~~(1) The Selectboard shall have sole and exclusive authority to make decisions affecting:~~

~~(A) the construction and maintenance of highways;~~

~~(B) personnel;~~

~~(C) proposed budgets;~~

~~(D) the use of space within municipal buildings and other property;~~

~~(E) short term borrowing; and~~

~~(F) other proprietary matters not within the jurisdiction of any other officer, board, or commission.~~

~~(2) The Sewer Commission shall have sole and exclusive authority to make decisions affecting:~~

~~(A) the construction and maintenance of the Town sewer system;~~

~~(B) rate setting;~~

~~(C) the adoption of policies relating to connections and disconnections to the system;~~

~~(D) the allocation of sewer capacity; and~~

~~(E) other questions relating to the operation of the sewer system.~~

~~(3)(A) The Selectboard shall make decisions affecting:~~

~~(i) the adoption of ordinances;~~

~~(ii) the laying out, reclassification, and discontinuance of highways;~~

~~(iii) the creation of new Town employee positions; and~~

~~(iv) financial matters including borrowing sums for longer than one year, following notice as provided in 24 V.S.A. § 1972.~~

~~(B) The voters may petition the Selectboard to warn a special meeting to approve or disapprove decisions made under subdivision (A) of this subdivision (3) pursuant to 24 V.S.A. § 1973.~~

~~(4) The Sewer Commission shall make decisions affecting the siting and laying out of new sewer lines, following notice as provided in 24 V.S.A.~~

~~§ 1972. The voters may petition the Selectboard to warn a special meeting to approve or disapprove such decisions, pursuant to 24 V.S.A. § 1973.~~

~~(5) Voters equal to or exceeding five percent of the checklist may petition the Selectboard for a special Town meeting or to add an article to the warning for an annual Town meeting to propose ordinances for adoption by Australian ballot or to vote on advisory, nonbinding articles directly affecting the Town, which questions shall be voted at the annual or special Town meeting.~~

~~(6)(c) The sole and exclusive body authorized to make decisions relating to issues of statewide or national interest, including positions on pending legislation, shall be the voters of the Town at Town meeting.~~

#### Subchapter ~~44~~ 10. Separability

#### § ~~44~~ 101. SEPARABILITY

If any provision of this charter is held invalid, the other provisions of the charter shall not be affected thereby. If the application of the charter or any of its provisions to any person or circumstances is held invalid, the application of this charter and its provisions to other persons or circumstances shall not be affected thereby.

Subchapter ~~12~~ 11. Amendment

§ ~~112~~ 111. AMENDMENT

The amendment of this charter shall be as provided by law.

Sec. 3. EFFECTIVE DATE

This act shall take effect on July 1, 2017.